88-1334 (1)

Supreme Court, U.S.
FILED
JAN 17 1989
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CLERK

No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

BILLY W. WILLIAMS, Petitioner

V.

THE UNITED STATES DEPARTMENT OF ENERGY,

ET AL.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BILLY W. WILLIAMS
4606 Freeport Way
Denver, Colorado 80239
(303) 371-8054

Pro Se Petitioner

QUESTIONS PRESENTED

(1) Whether a veteran under the Equal Protection and Due Process Clause of the Fifth Amendment to the Constitution of the United States has the same right as a non-veteran to sue the United States Government in federal court for job dscrimination.

(2) Whether a veteran under the Equal protection and Due Process Clause of the Fifth Amendment to the Constitution of the United States has the same federal equal employment opportunity rights and protection as a non-veteran.

LIST OF PARTIES

The parties to the proceeding below were the petitioner Billy W. Williams and the respondents the United States Department of Energy; John S. Herrington, Secretary of Energy, United States Department of Energy; Western Area Power Administration, United States Department of Energy; William H. Clagett, Administrator, Western Area Power Administration, United States Department of Energy; United States Office of Personnel Management; United States Office of Personnel Management, Denver Office; Constance Horner, Director, United States Office of Personnel Management; Robert J. Dunn, Area Manager, United States Office of Personnel Management, Denver Area; United States Equal Employment Opportunity Commission;

Clarence Thomas, Chairman, United States Equal Employment Opportunity Commission.

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Fifth Amendment to the Constitution of the United States and contradicted this Court's decision in Attorney General of New York vs Soto-Lopez, et al., 476 U.S. 898 and 106 S. Ct. 2317 (1986)..... 17

II. Because federal equal employment opportunity regulations, practices, and policies exclude veterans, Mr. Williams, a Vietnam Era veteran, was denied equal employment opportunities with the federal government and his right to file a timely job discrimination complaint against the federal government. The provisions of these equal employment opportunity regulations, practices, and policies violated Mr. Williams' right to equal protection and due process of law

guaranteed by the Fifth Amendment to the United States Constitution and contradict this Court's decision in Attorney General of New York vs Soto-Lopez, et al., 476 U.S. 898 and 106 S. Ct. 2317 (1986)..... 23

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

BILLY W. WILLIAMS, Petitioner,

V.

UNITED STATES DEPARTMENT OF ENERGY,

ET AL.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

The petitioner Billy W. Williams respectfully prays that a writ of Certiorari issue to review the Order Disposing of Appeal of the United States Court of Appeals for the Tenth Circuit entered in the above cause on October 17, 1988.

OPINIONS BELOW

The order Disposing of Appeal for the United States Court of Appeals for the Tenth Circuit, (No. 87-2897) and the order Dismissing Complaint and Cause of Action for the United States District Court for the District of Colorado (No. 87-Z-1088) are unreported and are reprinted in the appendix hereto, pages 2a-12a, infra.

JURISDICTION

The petitioner brought this suit in the United States District Court for the District of Colorado, Denver, Colorado. A hearing was held on November 23, 1987, and the complaint was dismissed without prejudice the same day. On petitioner's appeal, the United States Court of Appeals for the Tenth Circuit, Denver, on October 17, 1988, affirmed the order of the United States District Court and

issued a mandate directing that judgement be entered in favor of the respondents.

The jurisdiction of the Court to review the judgement of the United States Court of Appeals for the Tenth Circuit, is invoked under 38 U.S.C., Section 2014 (a).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the 1978 Civil Service Reform Act, 5 U.S.C., Sections 2301 (b) (1) and 2302 (b) (4) (5); 28 U.S.C., Section 2401 (27.); and Article III, Sections 1 and 2, of the Constitution of the United States. Also involved is the due process and equal protection clause of the Fifth Amendment to the Constitution of the United States. U.S. CONST. amend V. These are reproduced in the appendix beginning on page 13a.

STATEMENT OF THE CASE

This cause emanates from a federal agency denying the plaintiff, Billy W. Williams, his right to compete for federal employment in 1979 and then denying him the right to protest unfair job treatment because he was a veteran.

The plaintiff, a Vietnam Era veteran, was eligible for writer-editor and public information positions with the United States Government.

In July 1979, the plaintiff was notified by the Western Area Power Administration (WAPA), U.S. Department of Energy, that he was being considered for a writer-editor position. The next month, he received a brief WAPA notice informing him that Susan Drieband had been selected for the writer-editor position. Although the plaintiff had approximately 20 years professional

writing, editing, and public information experience, he was never interviewed for the position.

WAPA refused to provide the plaintiff information on Ms. Drieband's professional experience and her veteran status. The federal agency informed the plaintiff that it had decided to hire only a federal civilian employee and that Ms. Drieband, a federal civilian employee, was the best qualified for the writer-editor position. In 1986 and 1987, the plaintiff discovered that Ms. Drieband was a non-veteran and that she was less qualified than himself for the position.

The plaintiff could not have filed a timely job discrimination complaint against WAPA and the U.S. Department of Energy (DOE) because these employers did not have a job discrimination complaint

system for veterans. Also, U.S. Office of Personnel Management (OPM) publications for veterans informed the plaintiff and other Vietnam Era veterans that federal employers did not have to hire them and that these employers could hire from within or without the U.S. Civil Service system. OPM is responsible for administering a merit system for federal employment.

The plaintiff, in September 1981, complained of WAPA's unfair job treatment to Robert J. Dunn, director, Denver Region, OPM. Mr. Dunn, in January 1982, told the plaintiff that WAPA had acted within its authority to deny him a job interview and that it would be the only one to discuss its actions. Mr. Dunn tried to discourage Mr. Williams from seeking a federal job by stating that most federal civilian jobs were filled

from within the U.S. Government by federal civilian employees.

The plaintiff first knew in 1984 or 1985 that federal employers had to provide him fair and open job competition and that federal employees were prohibited from discouraging applicants from seeking federal employment. He was made aware of these federal employment policies when OPM furnished him information on the 1978 Civil Service Reform Act.

On October 6, 1986, the plaintiff filed a job discrimination complaint, based on his status as a Vietnam Era veteran, with DOE and against WAPA for violating his veterans' employment rights to deny him more than seven years of job opportunities with the U.S. Government. The DOE job discrimination complaint form excluded veterans. Later that month, the

plaintiff obtained WAPA documents which proved that he had been denied the right to apply and compete for a public information position with WAPA in 1978 although he was on the U.S. Civil Service register and was more qualified than the federal civilian employee, a Vietnam Era veteran, who was selected for the position. When the plaintiff asked John S. Herrington, U.S. Secretary of Energy, why he was not notified or considered for the WAPA public information position in 1978, DOE falsely informed the plaintiff that he had been notified and considered for the position.

DOE rejected the plaintiff's job discrimination complaint against WAPA because of its lateness and because, as a veteran, he was not protected by U.S. Equal Employment Opportunity Commission (EEOC) rules. DOE informed the plaintiff

that he could appeal its decision to EEOC although EEOC job discrimination rules excluded veterans. On June 9 or 10, 1987, WAPA informed the plaintiff that it still did not have a job discrimination complaint system for veterans and OPM had not issued instructions to WAPA to protect Mr. Williams and other veterans from job discrimination.

Using rules which exclude veterans, EEOC, on May 27, 1987, rejected plaintiff's job discrimination complaint against WAPA and DOE because he had not filed a timely job discrimination complaint with an EEO counselor.

In July 1987, the plaintiff filed a job discrimination complaint against WAPA, DOE, EEOC, and OPM in the U.S. District Court for the District of Colorado, Denver, for deliberately

providing him misleading information and engaging in deceitful practices to deny him fair employment; for failing to provide him maximum job opportunities with the U.S. Government as required by the Vietnam Era Veterans' Readjustment Assistance Act, Section 2014 (a); for failing to provide him administrative remedies so that he could file a job discrimination complaint based on his status as a veteran thereby denying him due process and equal protection of the law; and for denying him more than seven years of job opportunities with the U.S. Government. The plaintiff sought damages against all defendants in the amount of six million dollars and a court order directing EEOC to include Vietnam Era veterans and other eligible veterans in all federal equal employment opportunity regulations, practices, and policies.

Because the court refused to appoint the plaintiff an attorney and because he could not afford an attorney, he filed his complaint pro se.

The plaintiff asserted that the court had jurisdiction over his claims under the following statutes and other authorities: Civil Service Reform Act, 5 U.S.C., Sections 2301-2302; Vietnam Era Veterans; Readjustment Assistance Act, 38 U.S.C., Section 2014 (a) and (d); Federal Tort Claims Act, 28 U.S.C., Section 1346 (correct citation is 28 U.S.C., Sections 2671-2680); 28 U.S.C. 2401; Freedom of Information Act, 5 U.S.C. 552 (b) (correct citation is 5 U.S.C., Section 552); Executive Order 12067 of 1978; Executive Order 12107 of 1978; code of Ethics for Government Service, as amended by Public Law 96-103; and the Fifth Amendment to the Constitution of the United States.

The defendants filed a motion to dismiss the plaintiff's complaint on the grounds that the court lacked subject matter over the plaintiff's claims; the complaint was untimely; and that it failed to state a claim against EEOC or Mr. Thomas, its chairman. The plaintiff filed a "Petition For A Fair Hearing" with the court and submitted a memorandum in opposition to the motion to show that his job discrimination complaint was timely; that Article III of the Constitution of the United States gave the court jurisdiction over his complaint; that the U.S. Government had failed to provide him administrative remedies so that he could file a timely job discrimination complaint; and that EEOC had violated his constitutional right to equal protection and due process

to deny him fair employment with the U.S. Government.

The court, on November 23, 1987, heard oral arguments from the plaintiff and counsel for the defendants. Upon conclusion of oral arguments, the court issued a bench ruling dismissing the plaintiff's complaint without prejudice. The court ruled that it did not have jurisdiction over the plaintiff's complaint because only persons protected by 42 U.S.C. Section 1981 and Title VII of the 1964 Civil Rights Act forbids job discrimination on the basis of race, national origin, religion, and sex. The court ruled that since veterans were not protected by the two Acts or any other federal statute, they could not sue any employer in federal court for job discrimination and that they had to use

available administrative remedies to resolve their job discrimination complaints.

On February 26, 1988, the plaintiff appealed the court's decision to the United States Court of Appeals for the Tenth Circuit Denver. Because the plaintiff could not afford or obtain an attorney, he filed his appeal pro se. The plaintiff said that the district court was in error because Article III of the Constitution of the United States gave the district court jurisdiction over his complaint; because veterans can file job discrimination complaints in federal courts when employers violate their employment rights under the Veterans' Reemployment Act, 38 U.S.C., Chapter 43; and because veterans can file job discrimination complaints in federal

courts when employers violate their right to equal protection of the law guaranteed by the Fifth or Fourteenth Amendment to the Constitution of the United States. See Attorney General of New York vs Soto Lopez, et al., 476 U.S. 898 and 106 S. Ct. 2317 (1986). The plaintiff informed the appeals court that the district court was in conflict with this Court's decision that veterans were constitutionally guaranteed equal protection of the law and that they had more rights than non-veterans. See Attorney General vs Soto-Lopez, supra. The equal protection right, which should have been applied to the plaintiff's complaint and his appeal, is guaranteed by the Fifth Amendment to the Constitution of the United States.

Mr. Williams presented the appeals court documents which proved that federal employers in Colorado had established closed hiring systems, open only to federal civilian employees, which kept Mr. Williams and other Vietnam Era veterans from obtaining their veterans' employment rights. He also furnished the court OPM statistics which showed that federal agencies in Colorado had poor records for hiring Vietnam Era veterans.

The appeals court decision, filed October 17, 1988, stated that the district court properly dismissed the plaintiff's complaint for lack of subject matter and jurisdiction. The appeals court, in dismissing the plaintiff's appeal, referenced two court cases which had nothing to do with the plaintiff's job discrimination complaint.

REASONS FOR GRANTING THE WRIT

I.

THE DISTRICT COURT AND THE COURT OF APPEALS DENIED MR. WILLIAMS THE RIGHT TO SUE THE FEDERAL GOVERNMENT IN FEDERAL COURT FOR JOB DISCRIMINATION BECAUSE HE IS A VETERAN. BY DENYING MR. WILLIAMS THE SAME RIGHT AS A NON-VETERAN TO SUE THE FEDERAL GOVERNMENT IN FEDERAL COURT FOR JOB DISCRIMINATION, THE COURTS DENIED HIM THE RIGHT TO EQUAL PROTECTION AND DUE PROCESS OF LAW GUARANTEED BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND CONTRADICTED THIS COURT'S DECISION IN ATTORNEY GENERAL OF NEW YORK VS SOTO-LOPEZ, ET AL., 476 U.S. 898 AND 106 S. CT. 2317 (1986).

The United States District Court for the District of Colorado and the United States Court of Appeals for the Tenth

Circuit ruled that only persons protected by 42 U.S.C., Section 1981, and Title VII of the 1964 Civil Rights Act could sue the federal government and other employers in federal courts for job discrimination. Because 42 U.S.C., Section 1981 and Title VII exclude veterans, the District Court and the Court of Appeals denied Mr. Williams the right to sue defendant federal agencies and certain of their employees in federal court for job discrimination because he is a veteran. The rulings by the District Court and the Court of Appeals denied Mr. Williams the same employment rights as non-veterans who are protected by Title VII and 42 U.S.C., Section 1981. 42 U.S.C., Section 1981 was enacted to provide blacks job opportunities and Title VII forbids job discrimination on the basis of race, national origin, religion, and sex.

The rulings of the District Court and the Court of Appeals violated Mr. Williams' right to equal protection and due process of law guaranteed by the Fifth Amendment to the Constitution of the United States and are in conflict with this Court's decision in Attorney General of New York vs Soto-Lopez, et al., supra. In this case, Justice Brennan, presenting the majority opinion of this Court, said that veterans were constitutionally guaranteed equal protection of the law. He further added:

> Compensating veterans for their past sacrifices by providing them with advantages over non-veteran citizens is a long standing policy of our Federal and State governments.

The decisions of the District Court and the Court of Appeals that Mr.Williams and other veterans could not, like non-veterans, sue the federal government in federal court for job discrimination,

contradict Justice Brennan's statement that veterans have more advantages over non-veterans. Mr. Williams and other Vietnam Era veterans will have less advantages than non-veterans if they are denied their constitutional rights of due process and equal protection when they suffer from job discrimination.

The rulings of the District Court and the Court of Appeals would require Mr. Williams and other veterans to resolve their job discrimination complaints through administrative, rather than through federal judicial channels. Unfortunately, there were no administrative remedies for veterans that Mr. Williams could have used to resolve his job discrimination complaint with the defendant federal agencies and certain of their employees. The counsel for the defendants stated that there were no

federal statutes which prohibited employers from discriminating against veterans. The Western Area Power Administration (WAPA) admitted that it did not have a job discrimination system for veterans, that U.S. Equal Employment Opportunity Commission (EEOC) rules excluded veterans, and that the U.S. Office of Personnel Management (OPM), responsible for insuring that federal employers comply with employment laws, had failed to issue instructions to WAPA to protect Mr. Williams and other veterans from job discrimination by federal employers. Mr. Williams also informed the District Court and the Court of Appeals that the U.S. Office of Special Counsel (OSC), which investigates forbidden federal personnel practices, did not investigate complaints based on a person's veteran status.

The case of Mr. Williams is a proper one for disposition under Rule 17.1 (c), Rules of the Supreme Court of the United States. The decision of the Court of Appeals to deny Mr. Williams, a Vietnam Era veteran, the same employment rights as non-veterans violated his right to equal protection and due process of law which are guaranteed by the Fifth Amendment to the Constitution of the United States and is in conflict with this Court's decision that veterans are constitutionally guaranteed equal protection of the law. Because the Court of Appeals made significant errors to deny the petitioner fundamental and substantial rights, he implores the Court to summarily reverse the decision below.

II.

BECAUSE FEDERAL EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS, PRACTICES, AND POLICIES EXCLUDE VETERANS, MR. WILLIAMS, A VIETNAM ERA VETERAN, WAS DENIED EQUAL EMPLOYMENT OPPORTUNITIES WITH THE FEDERAL GOVERNMENT AND HIS RIGHT TO FILE A TIMELY JOB DISCRIMINATION COMPLAINT AGAINST THE U.S. GOVERNMENT. THE PROVISIONS OF THESE EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS, PRACTICES, AND POLICIES VIOLATED MR. WILLIAMS' RIGHT TO EQUAL PROTECTION AND DUE PROCESS OF LAW GUARANTEED BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND CONTRADICT THIS COURT'S DECISION IN ATTORNEY GENERAL OF NEW YORK VS SOTO-LOPEZ, ET AL., 476 U.S. 898 AND 106 S. CT., 2317 (1986).

The Western Area Power Administration (WAPA), the U.S. Department of Energy (DOE), and the U.S. Office of Personnel

Management (OPM) violated the 1978 Civil Service Reform Act, 5 U.S.C., Sections 2301 (b) (1) and 2302 (b) (4) (5); and the Vietnam Era Veterans Readjustment Assistance Act, 38 U.S.C., Section 2014 (a), by denying Mr. Williams the right to apply or compete for federal employment and by discouraging him from seeking federal employment. Desite WAPA's, DOE's, and OPM's abuses of federal laws and Mr. Williams' employment rights, Mr. Williams was unable to file timely job discrimination complaints against WAPA, DOE, OPM, EEOC, or any other federal employer because job discrimination laws and administrative remedies, administered and enforced by EEOC, exclude veterans. Although EEOC is resonsible for eliminating job discrimination in federal employment, it is currently administering and enforcing these job discrimination

laws which discriminate against Mr. Williams and other veterans: Title VII of the Civil Rights Act, Section 717 (42 U.S.C. 2000e-16), which prohibits discrimination in the federal government only on the basis of race, color, religion, sex, or national origin; and Title 29, C.F.R., Part 1613, which allows federal job applicants to file job discrimination complaints only on the basis of race, color, religion, sex, national origin, age, or mental handicap. These discrimination laws do not protect Mr. Williams and other veterans from job discrimination nor do they prohibit federal employers from discriminating against Mr. Williams and

other veterans. Mr. Williams also presented the U.S. District Court and the U.S. Court of Appeals documentation to show that DOE did not have a job discrimination complaint system for veterans while maintaining such a system for non-veterans. Mr. Williams informed the courts that OPM had failed to issue instructions or guidance to WAPA which would have protected him and other veterans from job discrimination.

Because Title VII of the 1964 Civil Rights Act, EEOC regulations, and the DOE job discrimination complaint system exclude veterans, Mr. Williams was denied the right to file job discrimination complaints and a federal job discrimination lawsuit against OPM, WAPA, DOE, and EEOC. Consequently, these federal job discrimination remedies,

which protect non-veterans, were closed to Mr. Williams solely on the basis that he was a veteran. Title VII of the Civil Rights Act, EEOC regulations, and the DOE job discrimination complaint system are also in conflict with this Court's decision in Attorney General of New York vs Soto-Lopez, et al., supra. In this case, this Court ruled that veterans were constitutionally guaranteed equal protection of the law and that they had more advantages than non-veterans. Chief Justice Burger further stated that a law must pass a rational basis test under the Equal Protection Clause. By denying veterans the same employment rights as non-veterans, Title VII, supra; and Title 29, C.F.R., supra, fail the Equal Protection Clause test. Mr. Williams had less advantages than non-veterans because, as a veteran, he was excluded

from job discrimination laws and administrative remedies which denied him the same rights as a non-veteran to file a job discrimination complaint and a job discrimination lawsuit against the federal government.

The Court of Appeals denied Mr. Williams his fundamental right to due process and equal protection when it dismissed his request that he and other veterans be included in EEOC regulations, practices, and policies. Because of this glaring error by the Court of Appeals, the petitioner respectfully requests this Court to champion the cause of justice and summarily reverse the decision below. The petitioner also requests this Court to order EEOC to provide veterans the same rights and protection that it provides non-veterans.

CONCLUSION

For the above reasons, the petitioner, Billy W. Williams, respectfully requests that the Court issue the writ of certiorari and reverse the decision of the U.S. Court of Appeals for the Tenth Circuit.

Respectfully submitted,

Billy W. Williams
Pro Se Petitioner
4606 Freeport Way
Denver, Colorado 80239
(303) 371-8054

January 11, 1989

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BILLY W. WILLIAMS, Plaintiff-Appellant,	)	
v.	)	No.87-2897
THE UNITED STATES DEPARTMENT OF ENERGY; JOHN S. HERRINGTON, Secretary of Energy, United States Dept. of Energy; WESTERN AREA POWER ADMINISTRATION, United States Dept. of Energy; WILLIAM H. CLAGETT, Administrator, Western Area Power Administration, United States Dept. of Energy; UNITED STATES OFFICE OF PERSONNEL MANAGEMENT; UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DENVER OFFICE; CONSTANCE HORNER, Director, United States Office of Personnel Management; ROBERT J. DUNN, Area Manager, United States Office of Personnel Management, Denver Area; UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; CLARENCE THOMAS, Chairman, United States Equal Employment Opportunity Commission,	)	(D.C. No.87-Z-1088) (D.Colo.)
Defendants-Appellees	)	FILED OCTOBER 17, 1988

ORDER DISPOSING OF APPEAL

ORDER AND JUDGEMENT

Before BALDOCK, BRORBY, Circuit Judges, and BURCIAGA, District Judge.*

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*The Honorable Juan G. Burciaga, District Judge, United States District Court for the District of New Mexico, sitting by designation.

After examing the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34 (a); 10th Cir. R 34.1.8. The cause is therefore ordered submitted without oral argument.

This is an appeal from the district court's order of November 30, 1987, dismissing the plaintiff-appellant's action without prejudice. The plaintiff

is a twenty-three year veteran of the United States Air Force, who served during the Vietnam era. He commenced the underlying action in 1987 for various acts and omissions allegedly committed by the defendant federal agencies and certain of their employees in connection with the plaintiff's application for and denial of a position with the defendant Western Area Power Administration (WAPA) in 1979.

The plaintiff claimed that he was qualified for the position and that, in light of the federal government's stated policy "to promote the maximum of employment and job advancement opportunities within the Federal Government for qualified disabled veterans and veterans of the Vietnam era,"[1] he should have been chosen for the

[1] Vietnam Era Veterans Readjustment Assistance Act, 38 U.S.C. § 2014.

position. He claimed that by choosing a non-veteran over himself, WAPA discriminated against him as a Vietnam veteran. The plaintiff's claims against the other defendants centered primarily around their alleged failure to provide him with information and assistance in pursuing his complaint against WAPA and to ensure that WAPA and other federal agencies followed the above-stated policy of the federal government regarding the employment of Vietnam-era veterans. The plaintiff also alleged that he was denied his right to due process and equal protection by reason of the fact that the defendant agencies did not have administrative processes whereby the plaintiff could lodge an employment discrimination complaint based on his status as a Vietnam-era veteran and have the agencies give the complaint the same

consideration and treatment as one which alleged discrimination based on one's status as a member of a class protected by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17.

The plaintiff sought damages against all the defendants in the amount of six million dollars, as well as injunctive relief against the Equal Employment Opportunity Commission (EEOC) in the form of an order directing it to include Vietnam era veterans and other eligible veterans in all federal Equal Opportunity regulations, practices, and policies.

The plaintiff asserted that the court had jurisdiction over his claims under the following statutes and other authorities: Civil Service Reform Act, 5 U.S.C. §§2301-2302; Vietnam-Era Veterans Readjustment Assistance Act, 38 U.S.C. §2014 (a) and (d); Federal Tort Claims

Act, 28 U.S.C. §1346 (correct citation is 28 U.S.C. §§ 2671-2680); 28 U.S.C. §2401; Freedom of Information Act, 5 U.S.C. 552(b) (correct citation is 5 U.S.C. §552); Executive Order 12067 of 1978; Executive Order 12107 of 1978; Code of Ethics for Government Service, as amended by Pub. L. 96-303; and the fifth amendment to the United States Constitution.

The defendants filed a motion to dismiss the plaintiff's complaint on the grounds that the court lacked subject matter jurisdiction over the plaintiff's claims, the complaint was untimely, and it failed to state a claim against either the defendant EEOC or Mr. Thomas, its chairman. In response, the plaintiff filed a "Petition for Fair Hearing" with the court and tendered a memorandum in opposition to the motion.

The court heard oral argument on the motion, at the conclusion of which it issued a ruling from the bench dismissing the plaintiff's complaint without prejudice. The court stated in its ruling that it did not have subject matter jurisdiction over the plaintiff's discrimination claims, and that the action against the EEOC and its chairman was not proper. The court further stated that the dismissal would be without prejudice because the plaintiff was pro se and "some inventive attorney (might be able to) figure out a cause of action in this case."

We review de novo the district court's dismissal of the plaintiff's claims for lack of subject matter jurisdiction and for failure to state a claim. See Madsen v United States ex. rel. United States Army, Corps of Eng'rs,

841 F. 2d 1011, 1012 (10th Cir. 1987); Morgan v. City of Rawlins, 792 F. 2d 975, 978 (10th Cir. 1986). Upon review of the record on appeal and the parties' briefs, we conclude that the district court properly dismissed the plaintiff's complaint, and we affirm the district court's order for substantially the reasons stated by the court in its ruling from the bench.

The judgement of the United States District Court for the District of Colorado is AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

PER CURIAM

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 87-Z-1088

BILLY W. WILLIAMS,

Plaintiff,

FILED
NOVEMBER 30, 1987

v.

UNITED STATES DEPARTMENT OF ENERGY; JOHN S. HERRINGTON, Secretary of Energy, United States Department of Energy; WESTERN AREA POWER ADMINISTRATION, United States Department of Energy; WILLIAM H. CLAGETT, Administrator, Western Area Power Administration, United States Department of Energy; UNITED STATES OFFICE OF PERSONNEL MANAGMENT; UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, Denver Area; CONSTANCE HORNER, Director, United States Office of Personnel Management; ROBERT J. DUNN, Area Manager, United States Office of Personnel Management, Denver Area; UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; and CLARENCE THOMAS, Chairman, United States Equal Employment Opportunity Commission.

Defendants

ORDER OF DISMISSAL

This matter was before the Court on November 23, 1987, for oral argument on the defendants' Motion to Dismiss. Plaintiff appeared pro se and Assistant United States Attorney Chalk S. Mitchell appeared on behalf of defendants. The Court heard the arguments and statements of plaintiff and Attorney Mitchell and made oral conclusions of law which are incorporated herein by reference as if fully set forth. Accordingly, it is

ORDERED that defendants' Motion To Dismiss is granted. It is

FURTHER ORDERED that the Complaint and cause of action are dismissed without prejudice. It is

FURTHER ORDERED that the parties shall pay their own costs.

DATED at Denver, Colorado, this 30 day of November, 1987.

BY THE COURT

SIGNED

ZITA L. WEINSHIENK, Judge
United States District Judge

38 U.S.C., Section 2014 (a). Employment within the Federal Government. It is the policy of the United States and the purpose of this section to promote the maximum of employment and job advancement opportunities within the Federal Government for qualified disabled veterans and veterans of the Vietnam era. 5 U.S.C., Section 2301 (b) (1). Merit system principles. Federal personnel management should be implemented with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

5 U.S.C., Section 2302 (b) (4) (5). Prohibited personnel practices. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority -

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment...

28 U.S.C., Section 2401 (27.). Accrual of Action. Period of limitations does not always begin on the date of wrong, and no cause of action generally accrues until the plaintiff has a right to enforce the cause, and where plaintiff had no reasonable probability of

successfully prosecuting his claim against the government prior to the enunciation of the new rule which gave plaintiff a cause of action, the cause of action accrued as of the date of that decision. United States v One 1961 Red Chevrolet Impala Sedan (1972, CA5 Fla) 457 F2d 1353.

U.S. CONST., Article III. Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish...

U.S. CONST., Article III. Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority...

U.S. CONST. amend V, ...Nor be deprived of life, liberty, or property, without due process of law...